

# Calendar No. 1596

86TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 1533

## WESLEY C. NEWCOMB

JUNE 8, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 6149]

The Committee on the Judiciary, to which was referred the bill (H.R. 6149) for the relief of Wesley C. Newcomb, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the bill is to pay to Wesley C. Newcomb, of Des Moines, Iowa, the sum of \$314.45 as reimbursement of the amount which he was required to pay as the result of a judgment and costs rendered against him in a case arising out of an accident which occurred on January 17, 1956, while he was operating a Government vehicle in the course of his duties as an employee of the Fish and Wildlife Service, Department of the Interior.

#### STATEMENT

The Department of the Interior recommends the enactment of the bill.

In its favorable report on the bill, the Committee on the Judiciary of the House of Representatives has commented—

On January 17, 1956, Wesley C. Newcomb was driving a Government-owned automobile while on official business in the city of St. Joseph, Mo. On that date the streets of St.

Joseph were snowcovered, and driving was hazardous due to the slippery condition of the streets. On about 8:15 in the morning on that date Mr. Newcomb was involved in an intersection accident with a 1951 DeSoto automobile driven by a Mr. Clifford Davis. As has been observed in the report rendered this committee by the Department of the Interior, the report of the St. Joseph Police Department showed "no violations of traffic regulations," and further the department report stated that the accident was categorized as "unavoidable" due to hazardous street conditions.

Mr. Davis brought an action against Mr. Newcomb in his individual capacity instead of proceeding against the United States in accordance with the provisions of the Federal Tort Claims Act as is now codified in title 28 of the United States code. In that action a judgment was entered against Mr. Newcomb in the amount of \$294.45 plus costs, which amounted to \$20.

In its report to this committee the Department of the Interior recommends the enactment of this bill. The Department noted that the accident involved no violation of traffic regulations, and that the accident was unavoidable due to hazardous street conditions. The Department of the Interior concluded that these facts coupled with the fact that Mr. Newcomb was acting within the scope of his Federal employment at the time of the accident indicate the desirability of relief in the form provided in H.R. 6149.

This committee has concluded that the facts set forth in the report of the Department of the Interior, and as included in the evidence filed with the committee, justify relief in this instance. The committee agrees with the conclusions stated in the departmental report. It should be further realized that had the other person involved in the accident elected to proceed to judgment against the United States that judgment would have constituted a complete bar to an action against Mr. Newcomb. This is provided for in section 2676 of title 28 of the United States Code which states:

The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose act or omission gave rise to the claim.

In the light of the circumstances of this case, the committee recommends that the bill be considered favorably.

The committee has afforded relief by private legislation in similar cases in the past. It believes that the present case is a proper one for relief by private legislation and accordingly recommends the bill favorably.

Attached and made a part of this report is a letter, dated November 19, 1959, from the Department of the Interior.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., November 19, 1959.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CELLER: Your committee has requested a report on H.R. 6149, a bill for the relief of Wesley C. Newcomb.

We recommend enactment of this bill.

Wesley C. Newcomb was employed as a U.S. game management agent and was on official duty at the time of the accident that resulted in a judgment against him, as hereafter explained. The accident occurred at St. Joseph, Mo., on January 17, 1956, at 8:15 a.m. Mr. Newcomb was driving a Government-owned automobile that collided with a 1951 DeSoto automobile driven by Mr. Clifford Davis. Street conditions at the time were described as "snow covered and slippery." The report of the St. Joseph Police Department showed "no violations of traffic regulations." The accident is categorized as "unavoidable" due to hazardous street conditions.

As a result of the accident, an action was brought against Mr. Newcomb by Mr. Davis and the District Court of the United States for the Western District of Missouri, St. Joseph, Mo., entered judgment in favor of Mr. Davis in the amount of \$294.45 plus costs. Mr. Newcomb paid the amount of the judgment. Court costs are estimated at approximately \$20. Mr. Newcomb is liable for these costs.

While the rendering of a judgment against Mr. Newcomb would indicate that he was at fault, the accident involved no violation of traffic regulations and it was unavoidable due to hazardous street conditions. These facts, together with the circumstance of the accident having occurred during the course of Mr. Newcomb's Federal employment indicates, in our opinion, the desirability that he be reimbursed for his loss.

We have been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Sincerely yours,

D. OTIS BEASLEY,  
*Administrative Assistant Secretary of the Interior.*

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DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C., February 27, 1930.

Hon. Frank B. Rowland, Chairman,  
Of the House Committee on Public Lands,  
Room 1015, House Office Building, Washington, D. C.

Dear Mr. Chairman: Your committee has received a report on H. R. 8125, a bill for the relief of Wesley C. Newcomb. I have examined the bill and find it to be in accordance with the public interest. I am, therefore, in favor of its passage.

Wesley C. Newcomb was employed as a U. S. game warden from 1904 to 1914, during which time he was a faithful and efficient officer. He was discharged from service in 1914 on account of ill health. He has since that time been unable to obtain employment and is now in a destitute condition. He is a man of good character and has no other means of support. It is, therefore, in the public interest that he be granted the relief provided for in the bill.

We have been advised by the Bureau of the Public Lands that there is no objection to the inclusion of this report to your committee.

Sincerely yours,  
J. (for the Secretary of the Interior)

